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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

No.

WILLIS F. STREATER, Appellant

v.

UNITED STATES OF AMERICA, Appellee

JURISDICTIONAL STATEMENT FOR APPEAL FROM THE DISTRICT OF COLUMBIA COURT OF APPEALS

RICHARD L. FIELDS

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February 9, 1981

IN THE
SUPREME COURT OF THE UNITED STATES

No.

WILLIS F. STREATER, Appellant

v.

UNITED STATES OF AMERICA, Appellee

JURISDICTIONAL STATEMENT FOR APPEAL FROM THE
DISTRICT OF COLUMBIA COURT OF APPEALS

QUESTIONS PRESENTED

1. Whether the indigent defendant's constitutional right to counsel was denied when the District of Columbia Court of Appeals allowed court appointed counsel to withdraw without consent or knowledge of defendant.

2. Whether the review of the Court of Appeals of the District of Columbia of the transcript of a criminal trial is a permissible substitute for the accused's right to counsel.

3. Whether the District of Columbia can deny all review of the effectiveness of appellate counsel through this case holding that the local equivalent of and exclusive substitute for Habeas Corpus is not available to review alleged consititutional violations at the appellate level.

THE OPINION BELOW

On November 10, 1981, the District of Columbia Court of Appeals issued a Memorandum Opinion and Judgment denying the Appellant the relief sought. See Appendix. This opinion has subsequently been ordered for publication, but has not yet appeared.

JURISDICTIONAL GROUNDS

The case below was an appeal from the denial by the Superior Court of the District of Columbia of Appellant's motion under D.C.Code §23-110, which is the equivalent of and substitute for Habeas Corpus in the jurisdiction. Swain v. Pressley, 430 U.S. 372, 51 L. Ed 2d 411, 97 S. Ct. 1224, (1977). The District of Columbia Court of Appeals held that §23-110 "provides no basis upon which the trial court may review appellate proceedings." (p. 2) Consequently, taken

in conjunction with this Court's holding in Swain v. Pressley, supra, there appears to be no review of a denial of constitutional rights at appeal in the District of Columbia save through direct appeal to this Court.

Jurisdiction of this Court is founded on 28 U.S.C. §1257(2). The decision below establishes that the District of Columbia Statute allows no review of appellate process, and that such failure to review constitutional issues such as denial of right to counsel is unconstitutional. The statute is therefore repugnant to the Sixth Amendment to the Constitution as applied to the states through the Fourteenth Amendment.

THE STATUTE

The statute with which we are here concerned is set out in footnote 1 to the Opinion below, included in the appendix.

STATEMENT OF THE CASE

Willis Streater was convicted on July 29, 1976 of robbery, D.C. Code 1973, §22-2901. Appellant's trial counsel was appointed under the Criminal Justice Act to appeal the conviction. On November 14, 1977, that counsel moved to withdraw from the case, and that motion was granted by the District of Columbia Court of Appeals on August 15, 1978, over two years after the conviction. At that time the Court of Appeals also affirmed the conviction, effectively ending the appellant's proceedings before that Court. When the Appellant learned of the action of the Court of Appeals he no longer had any rights to proceed with his appeal under applicable law. This we do not question.

However, the Appellant did move the lower court to set aside his sentence solely for the purpose of allowing him time to appeal the merits of his original conviction. This motion was filed pro se. Counsel was later appointed. The motion to vacate the sentence was denied on August 8, 1979. The judge in the lower court found that there was effective assistance of counsel at appeal, (Opinion at p. 2) but when that decision was appealed, the Court of Appeals held that there had never been a right to make the motion. It is that decision that we are challenging here. The question of constitutional right to counsel was argued by both sides. However, the Court of Appeals now holds that there is no method whereby the issue of ineffective appellate counsel can be raised.

SIGNIFICANCE OF QUESTIONS PRESENTED

The United States of America notes in its Motion for Publication, included in the appendix, that this case is the only reported consideration of trial court review of appelate proceedings. The only cases cited by the Appellee involve federal Habeas Corpus. The significance of this case is that it arises in a jurisdiction with no intermediate appellate court, and with no right to federal court review of unconstitutional treatment of indigent criminal defendants.

This Court would be the only source of review of the appellate procedure followed under Anders v. California, 386 U.S. 738, 18 L. Ed 2d 493, 97 S.Ct 1396, (1967). Here we find that there is no state Habeas Corpus proceeding as followed in Anders, and no Federal right under Swain v. Pressley, supra.

The only forum to challenge the procedure is therefore the Supreme Court of the United States. Failure to consider this case leaves open the unresolved issue of the constitutional rights of the accused in the District of Columbia. The arguments below as to both equal protection and right to counsel have not been considered according to the opinion below. It is the position of the Appellant that Due Process under the Fourteenth Amendment requires that there be some process available to test the constitutionality of state action.

We therefore urge that this is a case that requires briefs on the merits and oral arguments, considering not only the rights of accused persons in the District of Columbia but as a guide to what consitiutes the limit of state power throughout the country.

APPENDICES

Appendix 1

District of Columbia Court of Appeals

DISTRICT OF COLUMBIA
COURT OF APPEALS

FILED NOV 10 1980

Hugh E. Kline
Acting Clerk

No. 79-899

WILLIS F. STREATER,
Appellant,

v. No. 54462-72

UNITED STATES,
Appellee.

Appeal from the Superior Court of the
District of Columbia,
Criminal Division

(Hon. Norma Holloway Johnson, Trial Judge)

(Submitted October 8, 1980 Decided November 10, 1980)

Before: Kelly, Kern and Harris, Associate Judges.

MEMORANDUM OPINION AND JUDGMENT

On July 29, 1976, appellant Willis F. Streater was convicted at a jury trial of one count of robbery, D.C. Code 1973, § 22-2901, and acquitted of two counts of armed robbery, D.C. Code 1973, §§ 22-2901, -3202, and assault with a dangerous weapon, D.C. Code 1973, § 22-502. Appellant's retained trial counsel, Charles F. Stow III, was appointed as his representative on appeal by this court. On November 14, 1977, Mr. Stow filed a motion to withdraw from the appeal certifying that there were no non-frivolous issues for appeal. We entered an order on August 15, 1978, granting the motion to withdraw and affirming appellant's conviction.

Four months later, on December 27, 1978, appellant filed, pro se, a motion in the District of Columbia Superior Court to vacate his sentence pursuant to D.C. Code 1973, § 23-110. 1/ The Superior Court granted appellant's request for court-appointed counsel and appointed Martin J. Callaghan. On April 20, 1979, Mr. Callaghan filed a supplemental motion to vacate sentence pursuant to D.C. Code 1973, § 23-110. An evidentiary

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1/ Section 23-110 provides, in pertinent part:

> (a) A prisoner in custody under sentence of the Superior Court claiming the right to be released upon the ground that (1) the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia, (2) the court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, (4) the sentence is otherwise subject to collateral attack, may move the court to vacate, set aside, or correct the sentence.

hearing on the motion was held on May 24, 1979. Superior Court Judge Norma Holloway Johnson issued an opinion and order on August 8, 1979, denying appellant's motion to vacate sentence. Judge Johnson found that "the Court of Appeals was able to provide full consideration and resolution of the issues as there was indeed an advocate," using the Anders v. California, 386 U.S. 738 (1967) test. 2/ Appellant now appeals that finding.

We hold that the grounds for the relief requested by appellant are not within the purview of § 23-110. (See note 1 supra.) Appellant has not argued that his sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia. Nor has the appellant argued that the Superior Court was without jurisdiction to impose the sentence, or that the sentence is in excess of the maximum authorized by law. And, finally, appellant has not argued that his sentence is otherwise subject to collateral attack.

Appellant has raised, as grounds for vacating his sentence, Mr. Stow's alleged ineffectiveness of counsel in prosecuting the appeal. Section 23-110 provides no basis upon which the trial court may review appellate proceedings. Accordingly, it is

ORDERED and ADJUDGED that the judgment appealed from is affirmed.

PER CURIAM.

For the Court:

Hugh E. Kline,
Acting Clerk.

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[2] In Anders v. California, supra, the Supreme Court set forth the procedures to be followed when a court-appointed counsel seeks to withdraw from a criminal appeal.

Copies to:

Honorable Norma Holloway Johnson

Clerk, Superior Court

Richard F. Fields, Esquire
5301 Wisconsin Avenue, N.W.,
Suite 103
Washington, D.C. 20015

John A. Terry, Esquire
Assistant U. S. Attorney

Appendix 2

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 79-899
(Cr. No. 54462-72)

WILLIS F. STREATER, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

MOTION FOR PUBLICATION OF MEMORANDUM OPINION

Appellee respectfully moves, pursuant to section IX (B) of the Internal Operating Procedures of this Court, that the memorandum opinion issued by the Court on November 10, 1980, be published and sent to the West Publishing Company for inclusion in the Atlantic Reporter.

We ask for publication because the Court's opinion seems to be the only holding of this Court to the effect that 23 D.C. Code § 110 "provides no basis upon which the trial court may review [prior] appellate proceedings" (Memorandum Opinion at 2). We recall that in writing our brief we had difficulty in finding applicable case law,[1/] and we submit that publication of the Court's opinion would provide the bench and bar of the District of Columbia with a very useful precedent -- perhaps the only available precedent -- on this particular issue.

1/ We were able to find only two cases arising under 28 U.S.C. §2255, one from the Third Circuit and one from the Fifth Circuit. While they were quite helpful, a case from the District of Columbia arising under section 110 would have been even more helpful.

WHEREFORE, it is respectfully requested that the instant motion be granted.

CHARLES F. C. RUFF
United States Attorney

JOHN A. TERRY
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion has been mailed to counsel for appellant, Richard L. Fields, Esquire, 5301 Wisconsin Avenue, N.W., Washington, D.C., 20015, on this 5th day of December, 1980.

JOHN A. TERRY
Assistant United States Attorney

DISTRICT OF COLUMBIA
COURT OF APPEALS

REC'D FEB 9 1981

Hugh E. Kline
Acting Clerk

DISTRICT OF COLUMBIA COURT OF APPEALS

WILLIS F. STREATER

Appellant

v.

No. 79-899

UNITED STATES OF AMERICA

Appellee

NOTICE OF APPEAL

Notice is hereby given that Willis F. Streater hereby appeals to the United States Supreme Court from the decision of this court entered in the above captioned case on the 10th day of November, 1980.

Richard L. Fields
Counsel for Appellant
5301 Wisconsin Ave., N.W.
Washington, D.C. 20015
(202) 363-1782 UBN 958926

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Appellant's Notice of Appeal to the United States Supreme Court has been served by mail upon the Office of the Solicitor General, Department of Justice, Washington D.C. 20530, this 9th day of February, 1981.

Richard L. Fields

80-6169

IN THE

SUPREME COURT OF THE UNITED STATES

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WILLIS F. STREATER Appellant	:	
v.	:	No.
UNITED STATES OF AMERICA Appellee	:	

MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

Comes now the Appellant, Willis F. Streater, and prays this honorable Court for leave to proceed on appeal without being required to prepay fees, costs or give security therefor, due to my poverty. As grounds I state the following:

1. The appeal to the court below, the District of Columbia Court of Appeals was conducted in forma pauperis, under the Criminal Justice Act, all provisions of that act having been complied with.

2. The Appellant is currently incarcerated and has no realistic possibility of acquiring funds with which to proceed.

3. The Affidavit in Support of this Motion will be executed in compliance with the rules of this court.

Respectfully submitted,

Richard L. Fields
Counsel for Appellant

Robert A. Fields
Counsel for Appellant